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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2011-840

13 **DANA LUCHEER SHEPHERD**
3030 Pasadena St.
Bakersfield, CA 93306

A C C U S A T I O N

14 Registered Nurse License No. 500451

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
20 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
21 Consumer Affairs (Board).

22 2. On or about March 31, 1994, the Board issued Registered Nurse License No. 500451
23 to Dana Lucheer Shepherd (Respondent). The Registered Nurse License was in full force and
24 effect at all times relevant to the charges brought herein and will expire on April 30, 2012, unless
25 renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the Board under the authority of the following
28 laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

4. Section 118, subdivision (b), of the Code provides that the suspension/expiration/surrender/cancellation of a license shall not deprive the Board/Registrar/Director of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 492 of the Code provides:

"Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest.

"This section shall not be construed to apply to any drug diversion program operated by any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division."

6. Section 2750 of the Code provides that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

7. Section 2761 of the Code provides:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct, which includes, but is not limited to, the following:

....

"(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter [the Nursing Practice Act] or regulations adopted pursuant to it.

8. Section 2762 of the Code provides:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

"(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

"(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

9. Section 2764 of the Code provides that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

10. Health and Safety Code section 11550, makes it unlawful for any person to use or be under the influence of any controlled substance in Schedule II (Health and Safety Code section 11055), or any narcotic drug in Schedules III-V, except when administered by or under the direction of an authorized license.

COST RECOVERY

11. Section 125.3 of the Code provides that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

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CONTROLLED SUBSTANCE / DANGEROUS DRUG

12. Methamphetamine is a Schedule II controlled substance, as designated by Health and Safety Code section 11055(d)(2), and is categorized as a dangerous drug pursuant to section 4022 of the Code.

FIRST CAUSE FOR DISCIPLINE

**(Unlawfully Obtain / Possess Controlled Substance and Dangerous Device -
Methamphetamine)**

14. Respondent is subject to disciplinary action under sections 2761, subdivision (a), and 2762, subdivision (a), in conjunction with Health and Safety Code section 11550, on the grounds of unprofessional conduct, in that, on or about October 3, 2010, Respondent was arrested by Bakersfield Police Officers for unlawfully possessing Methamphetamine and a used Methamphetamine smoking pipe, while caring for her ten (10) year old granddaughter. The circumstances are as follows:

a. On or about October 20, 2010, after pleading guilty, Respondent was placed on deferred entry of judgment for one misdemeanor count of violating Health and Safety Code section 11364 [possession of unlawful paraphernalia] in the criminal proceeding entitled *The People of the State of California v. Dana Lucher Shepard* (Super. Ct. Kern County 2010, No. BF134012A).

SECOND CAUSE FOR DISCIPLINE

(Dangerous Use of a Controlled Substance / Dangerous Drug)

15. Respondent is subject to disciplinary action under sections 2761, subdivision (a), and 2762, subdivision (b), on the grounds of unprofessional conduct, in that, on or about October 3, 2010, Respondent used a controlled substance and /or dangerous drug to an extent or in a manner dangerous or injurious to herself or others. Complaint refers to and by this reference incorporates the allegations set forth above in paragraph 14, subparagraph a, inclusive, as though set forth fully.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct / Violate Nursing Practice Act)**

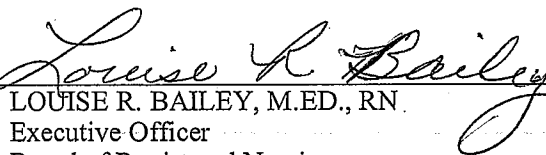
3 16. Respondent is subject to disciplinary action under section 2761, subdivisions (a) and /
4 or (d), in that, Respondent committed acts of unprofessional conduct, and / or acts violating
5 provisions of the Nursing Practice Act. Complaint refers to and by this reference incorporates the
6 allegations set forth above in paragraphs 14 and 15, inclusive, as though set forth fully.

7 **PRAYER**

8 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
9 and that following the hearing, the Board of Registered Nursing issue a decision:

- 10 1. Revoking or suspending Registered Nurse License No. 500451, issued to Dana
11 Lucheer Shepherd;
12 2. Ordering Dana Lucheer Shepherd to pay the Board the reasonable costs of the
13 investigation and enforcement of this case, pursuant to section 125.3; and
14 3. Taking such other and further action as deemed necessary and proper.

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16
17 DATED: 4/12/11


LOUISE R. BAILEY, M.ED., RN.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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